

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**DAVIS L. McCRARY, Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Tuscaloosa, AL, Employer**

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**Docket No. 04-202  
Issued: June 7, 2004**

*Appearances:*

*Davis L. McCrary, pro se*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On October 27, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 24, 2003, in which the Office denied his claim. He also appealed the Office's decision dated October 1, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues on appeal are: (1) whether appellant has met his burden of proof in establishing that he sustained a left leg injury in the performance of duty; and (2) whether the Office properly denied appellant's request for reconsideration.

**FACTUAL HISTORY**

On October 3, 2002 appellant, then a 56-year-old psychiatric nursing assistant, filed a claim alleging that on September 19, 2002 while handling a patient he tripped over a broda chair and hit his left leg. He stopped work on September 28, 2002 and returned on October 23, 2002.

In support of his claim, appellant submitted emergency room records from October 3, 2002, in which Dr. W. Elwin Crawford, Board-certified in emergency medicine, noted that he presented with right lower leg pain, which he reported developed after he bumped his right lower leg on a geriatric chair two weeks previously. Dr. Albert T. White, Jr., a Board-certified internist, noted that appellant presented with pain, swelling and drainage from his right leg. He further noted a history of chronic stasis and cellulitis in the right leg and advised that appellant bumped his leg two weeks previously and sustained a skin tear which evolved into an ulcer. Dr. Garner Rowell, Board-certified in emergency medicine, reported that appellant presented with progressive swelling and itching of his right lower extremity, which occurred when he bumped his leg two weeks previously. He diagnosed multiple ulcers of the right lower extremity which occurred from a previous injury. Dr. Ross E. Bunch, a specialist in plastic surgery, noted appellant's history of diabetes and upon physical examination it was noted that there were two small ulcerations to the anterior right lower leg with drainage. Appellant was diagnosed with cellulitis of the right lower extremity and diabetes and admitted for observation. He was discharged on October 9, 2002. An x-ray of the right leg dated October 3, 2002 revealed no fracture. A duty status report dated October 3, 2002 reported a history that appellant bumped his leg on a broda chair two weeks earlier without skin break. Dr. Bunch, whose signature is illegible, diagnosed a diabetic ulcer and recommended admission to the hospital. In emergency room records dated October 23, 2002, Dr. Robert Posey, Board-certified in emergency medicine, indicated that appellant was treated for infected stasis ulcer of the right lower extremity. Treatment notes from October 4 to December 12, 2002 indicated that he was treated for chronic right leg ulceration and cellulitis. Prescription notes submitted by Dr. Bunch dated October 29 and December 2, 2002 advised that appellant was to remain off work and report to the wound center for treatment of his right lower extremity.

In an employing establishment memorandum dated September 23, 2002, Spikey W. Howard, a workers' compensation specialist, advised that appellant reported on October 17, 2002 while pushing a patient to the smoking area on September 19, 2002 he bumped his right ankle on a chair.

In letters of controversion dated November 27 and December 31, 2002, the employing establishment noted that appellant's report of the incident of September 19, 2002 was inconsistent, in that he stated on the Form CA-1, that he injured his left leg, but the medical records submitted in support of the claim refer to a wound on the right leg. It was also noted that appellant was diabetic and that the duty status report of October 3, 2002 noted that there was no skin break from the incident at work which was inconsistent with Dr. White's report of October 7, 2002 which noted several ulcerations on the right leg.

By letter dated January 13, 2003, the Office asked appellant to submit additional information including a comprehensive medical report from his treating physician which included, a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed injuries.

In response to the Office's request, appellant submitted treatment notes dated October 17 to November 11, 2002, which indicated that he had been treated for chronic leg ulcers and

cellulitis and dermatitis of the right lower extremity. Also submitted were reports from Dr. Bunch dated January 2 to 9, 2003, which advised that he was treated for an infected stasis ulcer of the right lower extremity which had resolved. Appellant reported a history of injury noting that “he scrapped [sic] his right lower leg on a patient’s bed at work approximately mid September.” Dr. Bunch diagnosed chronic ulcer of the right lower extremity with onset related to a trauma by history and slow healing related to chronic venous stasis.

In a decision dated February 24, 2003, the Office denied appellant’s claim as the evidence was insufficient to establish that he experienced the claimed incident on September 19, 2002 to the left leg and, therefore, did not establish that he sustained an employment-related injury.

In a letter dated June 24, 2003, appellant requested reconsideration and submitted additional medical evidence. In a narrative statement, he alleged that, after he reported the injury, Mr. White was to represent him, but misled and misrepresented him. Appellant noted that his injury occurred when he was pushing a wheelchair to the smoking area and was trying to light a cigarette for a patient when he sustained a skin tear on his right lower leg. He noted that he delayed treatment because he did not realize the severity of his injury and reported the injury to the head nurse two weeks later. Appellant submitted a report from Dr. Bunch dated January 2, 2003, which indicated that he tripped over a chair and injured his right leg. Dr. Bunch notes of February 18, 2003 advised that appellant was treated for follow-up of a right lateral lower leg wound which had been present since mid-September. Appellant reported that he scraped his right lower leg on a patient’s bed at work in mid-September. Dr. Bunch diagnosed chronic venous stasis ulcer of the right lower extremity. He returned appellant to unrestricted work on April 29, 2003. Also submitted were reports from Dr. Kyung Moon, a Board-certified radiologist, dated October 17 to November 20, 2002, which noted that appellant was treated for an ulcer of the right leg/ankle and cellulitis. He indicated that the wound was the result of appellant hitting his right leg on a wheelchair. Other reports from Linda F. McGee, a nurse, dated March 3 to 20, 2003, advised that appellant was being treated for an injury sustained on March 2, 2003 when he was tripped by a patient.

By decision dated October 1, 2003, the Office denied appellant’s reconsideration request on the grounds that the evidence submitted was immaterial in nature and insufficient to warrant review of the prior decision.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>2</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>3</sup> In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.<sup>4</sup> An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.<sup>5</sup> A consistent history of the injury as reported on medical reports to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.<sup>6</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>7</sup>

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>9</sup>

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<sup>2</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>3</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *See Michael W. Hicks*, 50 ECAB 325 (1999).

<sup>6</sup> *Id.*

<sup>7</sup> *Michael E. Smith*, *supra* note 3.

<sup>8</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>9</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

### **ANALYSIS -- ISSUE 1**

In the instant case, appellant initially identified on the CA-1 that his injury was to his left leg, but later indicated that it was actually his right leg which was injured when he bumped into a broda chair. Although there appear to be conflicting statements as to which extremity was injured, the evidence supports that appellant did in fact hit his right leg on a chair on September 19, 2002. Specifically, appellant has provided a consistent history of the injury as reported on medical reports. In emergency room records from October 3, 2002, Dr. Crawford noted that appellant presented with right lower leg pain which appellant reported developed after he had bumped his right lower leg on a geriatric chair two weeks previous. Dr. White noted on October 4, 2002 that appellant presented with pain, swelling and drainage from his right leg, advised that appellant reported that he bumped his leg two weeks previously and sustained a skin tear which evolved into an ulcer. Dr. Rowell reported that appellant presented with progressive swelling and itching of his right lower extremity which occurred when he bumped his leg two weeks previously. Additionally, an employing establishment memorandum dated September 23, 2002, prepared by Mr. Howard, a workers' compensation specialist, advised that appellant reported that on September 19, 2002, while pushing a patient to the smoking area, he bumped his right ankle on a chair. While appellant may have initially identified his injury to the left leg, he submitted medical evidence to support a right leg injury. The Board notes that the claim should not be denied on the grounds that fact of injury has not been established without sufficient developing of the case "based on the facts at hand."<sup>10</sup> The Board notes that appellant has sufficiently explained his reasons for identifying the wrong extremity and subsequent medical records support appellant's claim that the incident was actually to his right leg as he later alleged.

Based on appellant's statements and description of the right leg injury in the record, the Board finds that appellant has established that an incident occurred at the time, place and in the manner alleged. As appellant satisfied his burden of proof in establishing that the September 19, 2002 employment incident occurred at the time, place and in the manner alleged, the case will be remanded to the Office to determine whether the medical evidence establishes that appellant sustained a traumatic injury to the right leg causally related to the September 19, 2002 employment incident. After any further development deemed necessary, the Office will issue a decision regarding the causal relationship issue.

### **CONCLUSION**

The Board finds that this case is not in posture for a decision.

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<sup>10</sup> See FECA Bulletin 96-10 (issued May 9, 1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 24, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed with regard to the left leg and the case is remanded for further development with regard to the right leg consistent with this opinion.<sup>11</sup>

Issued: June 7, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>11</sup> In view of the Board's disposition of the case on the merits, the issue of whether the Office properly denied appellant's June 24, 2003 request for reconsideration is rendered moot.